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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 14 2010

LIN 06 189 51525

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner claims to be a software development business. It seeks to permanently employ the beneficiary as a senior programmer analyst. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1] The petition is accompanied by a ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is March 23, 2006, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

As is set forth in the director's October 2, 2007 decision, at issue on appeal is whether the beneficiary is a member of the professions holding an advanced degree.[2] The AAO will also consider whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.[3]

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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[1]Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

[2]The AAO notes that the notice of intent to revoke (NOIR) was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record, pointing out that the record does not establish that the beneficiary is a member of the professions holding an advanced degree, and thus was properly issued for good and sufficient cause.

[3]An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[4]

At the outset, it is useful to discuss the DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts.

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[5] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> * * *
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did

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[4]The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[5]Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

> not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The [DOL] must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

In summary, it is the DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought.

Returning to the case at hand, in order to obtain classification in the requested employment-based preference category, the petitioner must establish that the beneficiary is a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3).

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) further requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." The regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language is that the petitioner must establish that the beneficiary possesses a single degree that is a U.S. baccalaureate degree or its foreign equivalent.[6]

Significantly, the third preference professional classification also contains the requirement of a single degree from a college or university. The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

The AAO cannot conclude that the evidence required to demonstrate that an alien is a second preference advanced degree professional is any less than the evidence required to show that the alien is a third preference professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Instead, persons who claim to qualify for an immigrant visa by virtue of a

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[6]It is noted that the H-1B nonimmigrant visa category regulation permits "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The regulations pertaining to the immigrant classification sought in this case do not contain similar language.

combination of education (and/or experience) equating to a U.S. bachelor's degree may qualify as a third preference skilled worker pursuant to Section 203(b)(3)(A)(i) of the Act.

Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[7] Further, in the final rule for 8 C.F.R. § 204.5, the legacy Immigration and Naturalization Service (the Service), responded to criticism that the regulation did not allow for the substitution of experience for education. In response, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an alien must have at least a bachelor's degree. 56 Fed. Reg. 60897,60900 (Nov. 29,1991).

In summary, there is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full U.S. baccalaureate degree (or foreign equivalent) from a college or university. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

In the instant case, the record of proceeding contains the following documents pertaining to the beneficiary's education:

- Diploma and transcripts for a three-year bachelor of science degree from Sri Venkateswara University, India; and
- One-year higher diploma in software engineering from Aptech Computer Education, India.

The petition contained an evaluation of the beneficiary's academic credentials by [redacted], dated July 2003 [redacted]. [redacted] states that the beneficiary's three-year bachelor of science degree is equivalent to three years of study towards a

[7] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability")(emphasis added).

bachelor of science degree from an accredited college or university in the United States. The evaluation also states that the beneficiary's one-year higher diploma in software engineering is equivalent to one year of study towards a bachelor of science degree in computer science from an accredited college or university in the United States. The evaluation concludes that the beneficiary's three-year bachelor of science degree, combined with the one-year higher diploma, are equivalent to a U.S. bachelor of science degree in computer science.

The petitioner submitted two additional evaluations, prepared by [redacted] and [redacted]. in the Commonwealth of Dominica ([redacted]. [redacted] evaluations are fundamentally identical, using the same phrasing and many of the same supporting materials, and they will therefore be considered together. The evaluations state that the beneficiary's three-year bachelor of science degree is equivalent to a four-year U.S. bachelor of science degree.

The evaluations note that some U.S. institutions of higher education will consider holders of three-year bachelor's degrees from India for entry into their master's degree programs. However, the evaluations do not address whether those few U.S. institutions that accept three-year degrees from India do so subject to additional conditions, such as requiring the degree holder to complete extra credits prior to admission. Further, the fact that some U.S. graduate programs accept three-year degrees has little relevance to whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate.

Second, the evaluations also state that some U.S. institutions offer three-year bachelor's degree programs. It is noted that there exists accelerated degree programs in the United States. However, this fact provides no useful information about the degree obtained by the beneficiary in India. At issue is the actual equivalence of the specific degree the beneficiary obtained, not whether it is possible to obtain a baccalaureate in less than four years in an accelerated program in the United States. The beneficiary did not compress his studies to obtain a degree in less than four years from an institution that grants four-year degrees, and, even if this were the case, the petitioner would need to establish that the beneficiary's accelerated degree is equivalent to a four-year, 120 credit hour U.S. bachelor's degree.

Third, the evaluations cite an article from World Education News & Reviews (WENR), titled "Evaluating the Bologna Degree in the U.S."[8] WENR is a monthly newsletter published by World Education Services (WES), a credentials evaluation organization. The newsletter article includes a brief assessment of three-year Bologna degrees from Europe. The article states that U.S. bachelor's degrees are based on the completion of 120 semester credits, and are generally completed over a four-year period. According to the article, approximately half of a U.S. bachelor's degree is devoted to general studies, and the remaining credits are devoted to the student's major and related subjects. In contrast, the Bologna degrees "are more heavily concentrated in the major – or specialization – and that the general education component which is so crucial to U.S. undergraduate education is

[8] www.wes.org/eWENR/04march/Feature.htm (accessed on February 24, 2010).

absent." The article compared a bachelor's degree in business administration from Indiana University in Bloomington, and a business administration Bologna degree from the Bocconi University in Milan, Italy. The article concludes, after assessing the requirements for admission to a Bologna degree program, its contents and structure, and the function that the credential is designed to serve in the home system, that the Bologna degree is "functionally equivalent to a U.S. bachelor's degree." However, this non-peer reviewed article from a newsletter is irrelevant as it provides no evidence for why the beneficiary's bachelor's degree from India is equivalent to a U.S. bachelor's degree.

Fourth, the evaluations also note that the U.S. and India are both UNESCO members, and that UNESCO recommends that the 3- and 4-year bachelor's degrees should be treated as equivalent by all UNESCO members. However, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004), provides:[9]

> Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. The [University Grants Commission], [All India Council for Technical Education] and [Association of Indian Universities] are developing criteria and mechanisms regarding the same.

Id. at 84. (Emphasis added.). Accordingly, any reliance on UNESCO for the proposition that a three-year Indian bachelor's degree is equivalent to a four-year U.S. bachelor's degree is misplaced.

A fundamental argument of the evaluations is that the U.S. institutions of higher education have adopted a variant of the "Carnegie Unit" as a measure of academic credit. According to the evaluations, 15 50-minute classroom hours equals one semester credit hour. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations claim that a program of study with 1800 classroom hours (or "contact hours") is equivalent to a U.S. bachelor's degree.

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[9]http://unesdoc.unesco.org/images/0013/001388/138853E.pdf (accessed on February 24, 2010).

Since a three-year bachelor's degree from India allegedly requires over 1800 classroom hours, the evaluations conclude that it is equivalent to a U.S. bachelor's degree. The evaluations provide no peer-reviewed material confirming that assigning credits solely based on hours spent in the classroom is applicable to the Indian tertiary education system.

The evaluations cite to the article "Three Year Undergraduate Degrees: Recommendations for Graduate Admission Consideration," ADSEC News, April 2005. The evaluations claim that the article concludes that, because the U.S. is willing to consider three-year degrees from Israel and the European Union, Indian bachelor's degree holders should be provided the same opportunity to pursue graduate education in the U.S. However, the article does not suggest that Indian three-year degrees are comparable to a U.S. baccalaureate. Instead, the article proposes accepting a *first class honors* three-year degree following a secondary degree from a Central Board of Secondary Education or Council for the Indian School Certificate Examinations program, or a three-year degree *plus a post graduate diploma* from an institution that is accredited or recognized by the National Assessment and Accreditation Council and/or the All India Council for Technical Education. Therefore this non-peer reviewed article from a newsletter directly undermines the argument that three-year degrees from India are, as a whole, equivalent to four-year U.S. bachelors degrees.

The evaluations also cite an Association of International Educators survey and a Council of Graduate Schools survey concerning the acceptance of three-year degrees. The surveys show that a small number of U.S. graduate programs accept three-year degrees from India. The surveys do not reflect how many of the limited number of institutions that accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, the vast majority of U.S. institutions would accept these degrees for graduate admission without provision. The cited surveys underline that there is not wide acceptance within the academic community of three-year degrees for admission into graduate schools. The Kersey evaluation provides no study or report that conclusively states that all Indian three-year degrees are equivalent to a U.S. bachelor's degree, or even that Indian three-year degrees are generally accepted for admission into U.S. graduate degree programs.

The evaluations cite to an article titled "Brief History of the American Academic Credit System: A Recipe for Incoherence in Student Learning," by [redacted], September 2002. The article discusses evolution and shortcomings of the U.S. credit hour system, and examines the arbitrariness of the credit hour as a purported unit of learning. It is noted that the article's criticism of the semester credit hour is equally applicable to the classroom contact hour. Accordingly, the article undermines the claims of the evaluations, as they seek to directly equate the semester credit hour with the classroom contact hour when determining equivalency.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the

alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Given the inconsistencies and issues with the submitted evaluations, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). EDGE provides another source to consider in the evaluation of foreign credential equivalencies. AACRAO, according to its website at www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials."[10]

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[11] If placement recommendations are included the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire council. *Id.* at 11-12.

EDGE provides a great deal of information about the educational system in India. According to EDGE, a three-year bachelor of science degree from India "represents attainment of a level of education comparable to two to three years of university study in the United States."[12]

EDGE also discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a postgraduate diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States."[13] However, the "Advice to Author Notes" provides:[14]

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[10]http://aacraoedge.aacrao.org/register/index/php (accessed November 22, 2009).

[11]*See An Author's Guide to Creating AACRAO International Publications*, 5-6 (First ed. 2005), at www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[12]http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=128 (accessed February 26, 2010).

[13]http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=131 (accessed February 26, 2010).

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The Edelson evaluation claims that the beneficiary's postgraduate diploma is from an AICTE-approved program, but submits no evidence to establish this conclusion. Further, even if the beneficiary's postgraduate diploma were equivalent to a U.S. bachelor's degree, as is discussed in detail above, the postgraduate diploma must have been issued by a college or university. There is no evidence in the record that Aptech Computer Education is a college or university.

The evidence submitted on appeal was not sufficient to establish that (1) the beneficiary's three-year bachelor of science degree is equivalent to a four-year U.S. bachelor's degree; and/or (2) Aptech Computer Education is an accredited college or university approved by the All-India Council for Technical Education, the AAO issued a request for additional evidence (RFE) on March 5, 2010. The RFE instructed the petitioner to provide such evidence and to specifically address the conclusions of the EDGE database.

In response to the AAO's RFE, counsel submitted a one paragraph cover letter accompanied by:

- Certificate of attendance and transcript from the [redacted] for Distance Education of Osmania University, India.
- Distance education transcript from Annamalai University, India.
- Certificate of provisional admission for an English course at the Centre for Distance Education, Bharathidasan University, India.

The certificate of attendance from Osmania University states that the beneficiary was enrolled in a master of science in mathematics program. The transcript states that the beneficiary failed all four classes in which he enrolled.

The transcript from Annamalai University states that the beneficiary completed courses towards a master of science degree in information technology. The transcript states that the courses were completed by distance education. There is no evidence that Annamalai University is an accredited institution of higher education or that the beneficiary ever received a degree.

The certificate of provisional admission for an English course at Bharathidasan University also does not establish whether the university is an accredited institution of higher education or whether the beneficiary ever received a degree.

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[14] *Id.*

Counsel's response to the AAO's RFE does not address whether the beneficiary's three-year bachelor of science degree is equivalent to a four-year U.S. bachelor's degree or whether Aptech Computer Education is an accredited college or university approved by the All-India Council for Technical Education. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The submitted credentials do not establish that the beneficiary possesses a single foreign degree from a college or university that is equivalent to a U.S. bachelor's degree.

Therefore, the evidence in the record does not establish that the beneficiary possesses a single-source foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. Accordingly, the beneficiary cannot be classified as a member of the professions holding an advanced degree, and the petition must be denied.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In the instant case, the priority date is March 23, 2006, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In evaluating the requirements for the offered position, USCIS must look to the job offer portion of the labor certification. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany* v. *Smith,* 696 F.2d 1008; *K.R.K. Iwine, Inc.* v. *Landon,* 699 F.2d 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coorney,* 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the position has the following minimum requirements:

H.4. Education: Master's degree in computer science
H.5. Training: None required
H.6. Experience in job offered: None required
H.7. Acceptable alternate field of study: Engineering, CIS, mathematics, electronics, communications, technology, [additional fields of study cut off by Form 9089].
H.8. Acceptable alternate combination of education and experience: bachelor's degree and five years or experience.
H.9. Foreign educational equivalent acceptable: Yes
H.10. Acceptable experience in an alternate occupation: Five years experience as a Programmer Analyst, Quality Assurance Analyst, Computer Consultant, [additional alternate occupations cut off by Form 9089].

It is noted that the labor certification explicitly requires an individual with a master's degree or a bachelor's degree and five years of experience. The petitioner could have specified on the labor certification that a combination of degrees individually less than a bachelor's degree would be acceptable, but did not do so. As is explained in detail above, the petitioner has not established that the beneficiary possesses a foreign degree that is equivalent to a U.S. bachelor's degree. Therefore, the petitioner has failed to establish that the beneficiary possesses the minimum educational requirements of the job offered.

The record does not establish that the beneficiary is a member of the professions holding an advanced degree. The record also does not establish that the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification. The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d at 1043.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.